

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

JANESHA MORRIS)	
Claimant)	
V.)	
)	Docket No. 1,071,576
LOWE'S HOME CENTER, INC.)	
Self-Insured Respondent)	

ORDER

Claimant requested review of the Settlement held on November 3, 2014, before Special Administrative Law Judge (SALJ) Mark E. Kolich. The Board heard oral argument on March 10, 2015.

APPEARANCES

Janesha Morris, of Kansas City, Kansas, appeared pro se. Dallas L. Rakestraw, of Wichita, Kansas, of appeared for the self-insured respondent (respondent).

RECORD AND STIPULATIONS

The Board has considered the record including the transcript of settlement hearing held on November 3, 2014, with attached exhibits and adopted the stipulations listed in the settlement. At oral argument to the Board, claimant was advised a Motion For Review and Modification of a prior award or settlement must be presented initially to an ALJ. The Board does not take original jurisdiction of any actions and has the jurisdiction and authority to only review matters previously determined by an ALJ.

ISSUES

This claim was settled for a lump sum payment of \$1,500 on a full and final basis at a settlement hearing on November 3, 2014. Respondent agreed to pay any authorized medical expenses incurred up to the date of the settlement. The settlement also closed out claimant's right to future medical treatment, review and modification and any other rights of claimant under the Kansas Workers Compensation Act (Act) as it relates to her July, 25, 2014, and August 3, 2014, dates of accident.

Claimant appeals the settlement, claiming she was under stress at the time of the settlement hearing and felt she had no choice but to accept the offer. Claimant contends

the SALJ acted without authority of the Director in accepting the lump-sum settlement. Claimant further argues the SALJ did not have the complete medical file associated with her alleged injuries and chemical exposures and when she tried to provide the complete medical records the SALJ refused. Claimant believes she suffered personal injury and raises the "Tort of the Negligence" as a defense and asks the Board to set aside the settlement.

Respondent argues claimant accepted the settlement and the check at the hearing in satisfaction of the Award and failed to return the funds, therefore she acquiesced in the judgment and lost her right to appeal. Respondent contends stress is not a sufficient reason to set aside the settlement award, nor is being pro se. Respondent contends SALJ Kolich made certain on several occasions that claimant understood the details of the settlement and that she was aware of her rights. Therefore, the Board should deny claimant's request to set aside the settlement agreement.

Issue: Should the Board set aside the November 3, 2014, lump sum settlement of claimant's workers compensation claims against respondent?

FINDINGS OF FACT

Claimant alleges two separate injuries while working for respondent. One injury arose as the result of a chemical exposure alleged by claimant to have occurred on August 3, 2014. The second injury claim arose as the result of an alleged assault by a co-worker of claimant's when he grabbed her left wrist causing her injury.

Timeline

- 7/25/14 Claimant alleges a work-related wrist injury due to a coworker grabbing her wrist.
- 8/3/14 Claimant alleges a chemical exposure causing an occupational disease injury while at work.
- 8/12/14 Claimant filed two workers compensation claims with respondent.
- 8/12/14 Claimant was evaluated by William T. Raue, D.O., for possible occupational injuries.
- 9/18/14 Dr. Raue's report determined the chemical exposure was not the prevailing factor in claimant's diagnosis of allergic rhinitis and the subsequent need for treatment. The report further finds no evidence of physical injury to claimant's left wrist, hand or forearm from the confrontation with her co-worker.
- 10/20/14 Claimant filed an Application for Hearing and an Application for Preliminary Hearing with the Division on both claims.

- 11/3/14 Settlement Hearing is held and claimant settled both claims for \$1,500.
- 11/10/14 Claimant filed an Application for Review with the Appeals Board.
- 11/13/14 Claimant filed an Application for Review and Modification with the Division.
- 12/12/14 Claimant filed an Application for Post-Award Medical with the Division.
- 12/15/14 Claimant filed an Application for Review and Modification with the Division.

Claimant suffered workplace injuries arising out of and in the course of her employment on or about July 25, 2014 and August 3, 2014. She testified that on July 25, 2014, a co-worker assaulted her, injuring her left wrist. On August 3, 2014, she was exposed to Hepstat 256 Chemical Disinfect which claimant alleges caused congestion and headaches. Claimant received some medical care, but was not advised about any additional care. Dr. Raue indicated he didn't think the chemical exposure was the prevailing factor in claimant's diagnosis of allergic rhinitis and subsequent need for treatment and found no evidence of physical injury to the left wrist, hand or forearm.

At the settlement hearing, SALJ Kolich informed claimant of her options for proceeding with her claim including: to settle; to get a second opinion from a doctor of her choice regarding her injury, the cause of injury and whether more treatment is needed and for a disability rating; or to hire an attorney to help with her case. Claimant was asked if she thought she had enough time to think about her options and she replied "I'm just going to go ahead and settle."¹ Claimant was also asked if she understood the information in her medical records. She responded that she had all of the records and wanted to settle her claim. During the discussion with the SALJ, claimant made note of specific medical information associated with her injury claims. She acknowledged having a folder in her possession containing multiple medical records dealing with her injuries and that she had the opportunity to review those medical records. She also acknowledged she knew it was possible she could get a greater settlement, but did not change her mind about settling. Claimant did not have a disability rating, and when asked by the SALJ, she declined the opportunity to obtain one.

The terms of the settlement were: a lump sum, full, final and complete of \$1,500, with the intention of closing out claimant's right to future medical treatment, review and modification and any and all other benefits claimant could be entitled to under the Act pertaining to the July 25, 2014, and August 3, 2014, accidents and any other accidents up through the date of the settlement hearing.

¹ S.H. Trans. at 4.

SALJ Kolich again asked claimant if she would like to hire an attorney and made it clear this was the last time this would be an option for this claim. Claimant declined and also declined to obtain a second medical opinion to get a disability rating. She accepted the settlement and its terms. Claimant was questioned as follows:

THE COURT: Okay. You'll just take the settlement as proposed?

THE CLAIMANT: Yeah.

THE COURT: Now, when you do that, you will give up your right to have a trial, you will give up your right to appeal the judge's decision, and you will give up your right to collect any more money for this injury, or these injuries, even if they worsen over time. Are you willing to give up those rights in exchange for this settlement?

THE CLAIMANT: Yes.

THE COURT: Once these cases are settled, if you need more treatment for these injuries, you will have to pay for it yourself. Do you understand that?

THE CLAIMANT: Yes.

THE COURT: If I approve this settlement, your cases for these two injuries will be completely and forever closed. Do you understand?

THE CLAIMANT: Yeah.

THE COURT: Do you believe this settlement represents you best interest?

THE CLAIMANT: Yeah.

THE COURT: Do you have any questions?

THE CLAIMANT: No.²

During the oral argument to the Board, claimant alleged she was, in some way, led to believe that she would be entitled to additional money 9 months after the settlement hearing. However, nothing in the hearing transcript supported claimant's allegations. Claimant also cited to the Board the 2009 version of K.S.A. 44-531 which does discuss, although in a different context, a 9 month period. The Kansas legislature modified K.S.A. 44-531 in 2011, removing any reference to a 9 month period for any purpose. Claimant was unaware of the legislative changes to K.S.A. 44-531.

² S.H. Trans. at 8-10.

PRINCIPLES OF LAW AND ANALYSIS

K.S.A. 2013 Supp. 44-501b(c) states:

(c) The burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record.

K.S.A. 2013 Supp. 44-508(h) states:

(h) "Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record unless a higher burden of proof is specifically required by this act.

K.S.A. 2013 Supp. 44-508(d)

(d) "Accident" means an undesigned, sudden and unexpected traumatic event, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force. An accident shall be identifiable by time and place of occurrence, produce at the time symptoms of an injury, and occur during a single work shift. The accident must be the prevailing factor in causing the injury. "Accident" shall in no case be construed to include repetitive trauma in any form.

K.S.A. 2013 Supp. 44-508(f)(1)(2)(B)

(f)(1) "Personal injury" and "injury" mean any lesion or change in the physical structure of the body, causing damage or harm thereto. Personal injury or injury may occur only by accident, repetitive trauma or occupational disease as those terms are defined.

...

(B) An injury by accident shall be deemed to arise out of employment only if:

- (i) There is a causal connection between the conditions under which the work is required to be performed and the resulting accident; and
- (ii) the accident is the prevailing factor causing the injury, medical condition, and resulting disability or impairment.

Claimant's allegations of a chemical exposure and an injury to her left wrist at work are undisputed in this very limited record. However, the only medical documents in evidence state that the chemical exposure was not the prevailing factor in claimant's development of allergic rhinitis and the subsequent need for treatment. Additionally, the only medical evidence in this record states claimant suffered no physical injury to her left wrist, hand or forearm during the altercation with her co-worker.

At oral argument to the Board, respondent discussed claimant's settlement amount and the fact the evidence supported an actual finding the two injury claims were not compensable. The \$1,500 settlement was intended to resolve the injury claims between claimant and respondent once and for all. Claimant provided no medical evidence of any permanent impairment from either injury. When offered the opportunity to discuss the medical evidence in her possession, claimant neglected or failed to offer anything to the SALJ.

K.S.A. 2013 Supp. 44-531(a) states:

(a) Where all parties agree to the payment of all or any part of compensation due under the workers compensation act or under any award or judgment, and where it has been determined at a hearing before the administrative law judge that it is for the best interest of the injured employee or the dependents of a deceased employee, or that it will avoid undue expense, litigation or hardship to any party or parties, the administrative law judge may permit the employer to redeem all or any part of the employer's liability under the workers compensation act by the payment of compensation in a lump-sum. The employer shall be entitled to an 8% discount except as provided in subsection (a) of K.S.A. 44-510b, and amendments thereto, on the amount of any such lump-sum payment that is not yet due at the time of the award. Upon paying such lump-sum the employer shall be released and discharged of and from all liability under the workers compensation act for that portion of the employer's liability redeemed under this section.

Claimant accepted the offered check at the settlement hearing and subsequently cashed the check. Claimant acknowledged at oral argument to the Board the funds had been spent and were no longer available to her. Additionally, there is nothing in the record to indicate claimant was promised any additional funds or was led to believe she would be paid anything above and beyond the \$1,500 settlement amount.

K.S.A. 2013 Supp. 44-531(a) is clear in its language.³ Once the lump-sum was paid and accepted, the employer was released and discharged from all liability under the Act. It is regrettable claimant elected to proceed without the assistance of counsel, but the SALJ offered her the opportunity to seek assistance on more than one occasion at the settlement hearing.

The Board finds the settlement on November 3, 2014, was conducted properly. Claimant accepted the offered funds, cashed the check and spent the money. There is nothing in this record to indicate the settlement occurred as the result of fraud or undue influence by respondent. The SALJ properly inquired of claimant to determine if this

³ When a workers compensation statute is plain and unambiguous, the courts must give effect to its express language rather than determine what the law should or should not be. *Bergstrom v. Spears Manufacturing Co.*, 289 Kan. 605, 214 P.3d 676 (2009).

settlement was in her best interest. The Board finds the settlement of November 3, 2014, should remain in full force and effect. Claimant's request that the settlement be set aside is denied.

CONCLUSIONS

Having reviewed the entire evidentiary file contained herein, the Board finds the November 3, 2014, Settlement Agreement should be affirmed.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Settlement Agreement approved by Special Administrative Law Judge Mark E. Kolich on November 3, 2014, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of April, 2015.

BOARD MEMBER

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